

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FI

Deputy General Counsel

EXTENSION

NO.

DATE

~~30 APR 1985~~ 14 MAY 1985

TO: (Officer designation, room number, and building)

DATE

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FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Charles A. Briggs
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Chuck:

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Attachments

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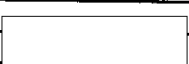

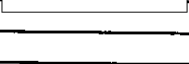


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Office of Legislative Liaison

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Remarks:

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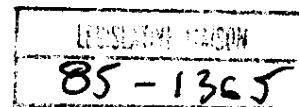
Office of Legislative Liaison
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Name/Date



ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Draft DCI Report to Congress on the Historical Review Program

Record

FROM:

EXTENSION

NO.

J. Kenneth McDonald
Chief, DCI History Staff

DATE

3 May 1985

DCI

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TO: (Officer designation, room number, and building)

DATE

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INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Charles A. Briggs
Director, Office of
Legislative Liaison

Attached for your information are the draft DCI Report to Congress on the Historical Review Program and a draft DCI letter of transmittal.

If you have any comments or suggestions, I would be glad to have them by the close of business Thursday, 9 May.


J. Kenneth McDonald

STAT

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PUBLIC LAW 98-477—OCT. 15, 1984

98 STAT. 2209

Public Law 98-477
98th Congress

An Act

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

Oct. 15, 1984
[H.R. 5164]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Central Intelligence Agency Information Act".

SEC. 2. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

Central
Intelligence
Agency
Information Act.
50 USC 401 note.

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE
CENTRAL INTELLIGENCE AGENCY

"EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW,
PUBLICATION, OR DISCLOSURE

"SEC. 701. (a) Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence from the provisions of section 552 of title 5, United States Code (Freedom of Information Act), which require publication or disclosure, or search or review in connection therewith.

50 USC 431.

"(b) For the purposes of this title the term 'operational files' means—

"(1) files of the Directorate of Operations which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services;

"(2) files of the Directorate for Science and Technology which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems; and

"(3) files of the Office of Security which document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources;

except that files which are the sole repository of disseminated intelligence are not operational files.

"(c) Notwithstanding subsection (a) of this section, exempted operational files shall continue to be subject to search and review for information concerning—

"(1) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 of title 5, United States Code (Freedom of Information Act), or section 552a of title 5, United States Code (Privacy Act of 1974);

"(2) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code (Freedom of Information Act); or

"(3) the specific subject matter of an investigation by the intelligence committees of the Congress, the Intelligence Over-

98 STAT. 2210

PUBLIC LAW 98-477—OCT. 15, 1984

sight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of Central Intelligence for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.

"(d)(1) Files that are not exempted under subsection (a) of this section which contain information derived or disseminated from exempted operational files shall be subject to search and review.

"(2) The inclusion of information from exempted operational files in files that are not exempted under subsection (a) of this section shall not affect the exemption under subsection (a) of this section of the originating operational files from search, review, publication, or disclosure.

"(3) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under subsection (a) of this section and which have been returned to exempted operational files for sole retention shall be subject to search and review.

"(e) The provisions of subsection (a) of this section shall not be superseded except by a provision of law which is enacted after the date of enactment of subsection (a), and which specifically cites and repeals or modifies its provisions.

Courts, U.S.

"(f) Whenever any person who has requested agency records under section 552 of title 5, United States Code (Freedom of Information Act), alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code, except that—

"(1) in any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign relations which is filed with, or produced for, the court by the Central Intelligence Agency, such information shall be examined ex parte, in camera by the court;

"(2) the court shall, to the fullest extent practicable, determine issues of fact based on sworn written submissions of the parties;

"(3) when a complaint alleges that requested records were improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission, based upon personal knowledge or otherwise admissible evidence;

"(4)(A) when a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, the Central Intelligence Agency shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsive records currently perform the functions set forth in subsection (b) of this section; and

"(B) the court may not order the Central Intelligence Agency to review the content of any exempted operational file or files in order to make the demonstration required under subparagraph (A) of this paragraph, unless the complainant disputes the Central Intelligence Agency's showing with a sworn written

PUBLIC LAW 98-477—OCT. 15, 1984

98 STAT. 2211

submission based on personal knowledge or otherwise admissible evidence;

"(5) in proceedings under paragraphs (3) and (4) of this subsection, the parties shall not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admission may be made pursuant to rules 26 and 36;

28 USC app.

"(6) if the court finds under this subsection that the Central Intelligence Agency has improperly withheld requested records because of failure to comply with any provision of this section, the court shall order the Central Intelligence Agency to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code (Freedom of Information Act), and such order shall be the exclusive remedy for failure to comply with this section; and

"(7) if at any time following the filing of a complaint pursuant to this subsection the Central Intelligence Agency agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

"DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES

"SEC. 702. (a) Not less than once every ten years, the Director of Central Intelligence shall review the exemptions in force under subsection (a) of section 701 of this Act to determine whether such exemptions may be removed from any category of exempted files or any portion thereof.

50 USC 432.

Ante, p. 2209.

"(b) The review required by subsection (a) of this section shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

"(c) A complainant who alleges that the Central Intelligence Agency has improperly withheld records because of failure to comply with this section may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court's review shall be limited to determining (1) whether the Central Intelligence Agency has conducted the review required by subsection (a) of this section within ten years of enactment of this title or within ten years after the last review, and (2) whether the Central Intelligence Agency, in fact, considered the criteria set forth in subsection (b) of this section in conducting the required review."

Courts, U.S.

(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

"TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE CENTRAL INTELLIGENCE AGENCY

"Sec. 701. Exemption of certain operational files from search, review, publication, or disclosure.

"Sec. 702. Decennial review of exempted operational files."

(c) Subsection (q) of section 552a of title 5, United States Code, is amended—

(1) by inserting "(1)" after "(q)"; and

98 STAT. 2212

PUBLIC LAW 98-477—OCT. 15, 1984

5 USC 552.
Reports.
50 USC 432 note.

(2) by adding at the end thereof the following:
“(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.”.

SEC. 3. (a) The Director of Central Intelligence, in consultation with the Archivist of the United States, the Librarian of Congress, and appropriate representatives of the historical discipline selected by the Archivist, shall prepare and submit by June 1, 1985, a report on the feasibility of conducting systematic review for declassification and release of Central Intelligence Agency information of historical value.

(b)(1) The Director shall, once each six months, prepare and submit an unclassified report which includes—

(A) a description of the specific measures established by the Director to improve the processing of requests under section 552 of title 5, United States Code;

(B) the current budgetary and personnel allocations for such processing;

(C) the number of such requests (i) received and processed during the preceding six months, and (ii) pending at the time of submission of such report; and

(D) an estimate of the current average response time for completing the processing of such requests.

(2) The first report required by paragraph (1) shall be submitted by a date which is six months after the date of enactment of this Act. The requirements of such paragraph shall cease to apply after the submission of the fourth such report.

(c) Each of the reports required by subsections (a) and (b) shall be submitted to the Permanent Select Committee on Intelligence and the Committee on Government Operations of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

Effective date.
50 USC 431 note.

SEC. 4. The amendments made by subsections (a) and (b) of section 2 shall be effective upon enactment of this Act and shall apply with respect to any requests for records, whether or not such request was made prior to such enactment, and shall apply to all civil actions not commenced prior to February 7, 1984.

Approved October 15, 1984.

LEGISLATIVE HISTORY—H.R. 5164 (S. 1324):

HOUSE REPORTS: No. 98-726, Pt. 1 (Permanent Select Committee on Intelligence) and Pt. 2 (Comm. on Government Operations).

CONGRESSIONAL RECORD, Vol. 130 (1984):

Sept. 17, 19, considered and passed House.

Sept. 28, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 42 (1984):
Oct. 15, Presidential statement.

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National Archives



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APR 10 1985

Honorable William J. Casey
Director
Central Intelligence Agency
Washington, DC 20505

Dear Mr. Casey:

I take great pleasure in sending you "A Report to the Director of Central Intelligence by Consultants on the Historical Review Program." We hope that the counsel provided will be helpful in the further development of an effective program and result in making Central Intelligence Agency (and predecessor organization) records available to researchers in the National Archives just as soon as they no longer require national security protection.

STAT

Please accept too, our thanks to Dr. J. Kenneth McDonald and [redacted] and their staffs for the conference arrangements and for providing us with essential information on CIA records, programs, review experience, and proposals for conducting the historical review program. The well organized briefings and the comments they contributed to our discussions were extremely helpful.

Sincerely,

ROBERT M. WARNER
Archivist of the United States

Enclosure

I very much enjoyed our luncheon discussion with you. It was most pleasant.
RM

A REPORT TO THE DIRECTOR OF CENTRAL INTELLIGENCE
BY CONSULTANTS ON THE HISTORICAL REVIEW PROGRAM

Public Law 98-477, enacted October 15, 1984, requires that the Director of Central Intelligence consult with the Archivist of the United States, the Librarian of Congress, and appropriate representatives of the historical discipline selected by the Archivist in preparing "a report on the feasibility of conducting systematic review for declassification and release of Central Intelligence Agency information of historical value." The Archivist designated the following historians to serve as consultants: John Lewis Gaddis, Distinguished Professor of History, Ohio University; Richard W. Leopold, William Smith Mason Professor of History, emeritus, Northwestern University; and Gaddis Smith, Larned Professor of History, Yale University. The Librarian of Congress was represented by the Assistant Librarian for Research Services, John C. Broderick. The Archivist, Robert M. Warner, was accompanied by two members of his staff: Frank G. Burke, Acting Assistant Archivist for the National Archives, and Alan Thompson, Director of the Records Declassification Division. On March 19, Mr. Thompson represented the Archivist. (Biographical summaries about the consultants are attached to this report.)

The Consultants met at CIA headquarters, Langley, Virginia, March 18-19, 1985, to discuss with the Director and members of his staff the Historical Review Program established by the Agency to meet the requirements of PL 98-477. The two-day program, arranged by CIA Chief Historian J. Kenneth McDonald, provided the consultant group with an opportunity to acquaint itself

with plans and procedures adopted by CIA and to discuss relevant issues with the staff members responsible for implementing the Historical Review Program in all its aspects. Following the briefings, the consultants met in executive session to formulate their recommendations. (A full agenda of the meeting is attached to this report.)

In the view of the consultants, PL 98-477 attempts to balance the benefits of an informed public with the national security need for an effective intelligence service. The Director of Central Intelligence has accepted the validity of public and historical interest in CIA files, consistent with the need to protect sources and foreign relations (Casey to Durenberger, October 4, 1983). The consultants likewise recognize the need to balance CIA's statutory obligation to protect intelligence sources and methods with legitimate historical interest in CIA records. PL 98-477, the Agency's Historical Review Program, and the work of the undersigned consultants seem to be important steps toward achieving such a balance.

Nevertheless, the consultants urge recognition of the fact that, in a society as open as that of the United States, excessive secrecy erodes Government credibility and encourages distortions of the historical record. The Department of State's decision in 1955 to release documentation on the Yalta Conference, only ten years after the event, provides an excellent example of how a policy of generous disclosure can promote more balanced discussion of controversial events without in any way compromising the interests of national security. We hope to see the CIA historical review program produce comparable results. We wish also to stress that the availability of full and reliable historical documentation is indispensable

for the education of students from whose ranks will come future officers of the Executive Branch, legislators, and teachers and commentators dealing with issues of national security policy.

We commend the decision by the Director and the Agency to assign a prominent role to the Historical Office in providing insight and judgments on historical value throughout the review process.

Aims and Methods. The aim of the Historical Review Program must be release of inactive records, appraised as permanently valuable, to the public via the National Archives, as the most effective means of serving the public interest and especially that of historical research. To that end the consultants recommend that (1) the Historical Review Program examine all permanently valuable records chronologically, beginning with the earliest, including the so-called "designated files" (i.e., those identified in PL 98-477, under Sec. 701 (b)). It is understood that the Agency is required to make a decennial review of exempted operational files. (CIA staff indicate that such a review will occur more often than every ten years.) Nevertheless, because records affecting a single activity of historical importance may appear in several files, including "designated files," it is hoped that the review program will include the latter files, in the expectation that one or more of the following actions may take place: dedesignation, declassification, and release to the public through transfer to the National Archives.

Ideally, whole office file systems, whole file series, and whole documents should be released as a result of the Historical Review Program. However, the consultants recommend that, when necessary, (2) release of sanitized documents is preferable to withholding of whole documents, when the following conditions are met: (a) the "sanitizing" may be accomplished with

little additional staff effort and minimal impact on the Review Program, (b) the essential significance of the record is retained, and (c) there is no distortion of bibliographical identity, including authorship and recipient, and use made of the record, even if details of internal dissemination are excised.

The consultants recommend that (3) those involved in the Historical Review Program, both permanent staff and those employed ad hoc, take full account of the extent to which information about CIA activities is already available other than through release of CIA files. They suggest close consultation with the Historical Office to achieve this goal.

Criteria. The consultants recommend that (4) the Historical Review Program adopt National Archives and Records Administration standards in selecting records for review (e.g., oldest records first, coherent groups, etc.). Further, the historical value and potential "yield" should be considered, keeping in mind the principle stated above, that the review program should ultimately lead to release of inactive files through the National Archives. Throughout, it should be remembered that "historical value equals that which is of value to historians," primarily those records that illuminate major national policies in the area of foreign affairs and national security. Although the basic approach in the review program will be determined by the nature of information in the files examined, we urge that both chronological and topical approaches be adopted. Two other principles may be expressed as follows: "finished first" and "top down." The final version of an intelligence report will be of value to historians, even if the raw material leading to the report remains classified and/or unreleased. It may be that the final report is the only version which the policy-maker had

available to him or her, in any case. The second principle applies to the order of priority. In other words, the files of the agency heads and principal subordinates are likely to be of greatest historical interest and value. Insofar as possible, such files should be high on the list of priorities for review, assuming that the "yield" in releasable files makes such an approach feasible. Ultimately, all records should be reviewed. Although finished intelligence considered by high ranking officials should have first priority, definitive history must be based on access to a mass of "unfinished," operational and administrative records. Furthermore, there is no way for one generation to know with certainty what historians of subsequent generations will consider most significant.

Organization and Procedures. The consultants were pleased to find a strong sense of institutional and personal commitment to the Historical Review Program on the part of those in charge of its implementation. We especially commend the decision of the agency to allot a full-time, dedicated staff to the effort, supplemented by qualified contractual assistance when warranted. As stated earlier, another plus in the plan is the significant role assigned to the revitalized and enlarged Historical Office. That staff is best qualified to render judgment on the potential historical value of certain files and records. That judgment is only a part of the entire review program, we acknowledge, but an essential ingredient nevertheless.

The consultants concluded that the important question of allocation of resources could not be readily addressed at this time. Whether the dedicated staff assigned to the Historical Review Program, including an augmented Historical Office staff, is sufficient to make acceptable progress, we cannot

say. For that reason, the consultants recommend that (5) the Director of Central Intelligence reassemble these consultants or a comparable group in two to three years to assess progress and to make further recommendations, as seem necessary.

We also urge the Director of Central Intelligence to use his authority as head of the Intelligence Community to insure that all relevant agencies of Government cooperate in the important undertaking which his agency has begun. The pace of the Historical Review Program should not be delayed by necessary actions of review by other agencies. During the two-day deliberations, National Archives and Records Administration representatives indicated that, barring unforeseen loss of staff resources, the NARA staff is equal to the task of keeping pace with the output of the Historical Review Program in processing and making available releasable documents in the National Archives.

Additional Considerations. The consultants discussed official disclosure through publication as well as through release of retired files to the National Archives. They also heard from representatives of the Department of State Historical Office concerning the publication series Foreign Relations of the United States (see agenda). The Foreign Relations volumes are "the official record of the foreign policy of the United States," as their successive prefaces avow. The volumes are, therefore, the appropriate and preferred vehicles for publishing "finished intelligence" (National Intelligence Estimates and the like) and other documents relating to intelligence activities abroad affecting foreign relations and national security. Indeed, without the inclusion of such documents, either in basic or supplementary volumes, the history of American foreign relations is impoverished and

incomplete. The consultants recommend, therefore, that (6) the Director of Central Intelligence authorize the publication of selected declassified and releasable intelligence reports and other intelligence related documents in regular or supplementary volumes in the FOREIGN RELATIONS series, rather than as separate publications by CIA.

The consultants are also concerned about the possible physical condition of CIA files, in an age when the preservation of paper documents is recognized as a costly and inescapable responsibility of archives and libraries. Because of the generally longer period of retention of records in CIA custody than would be customary for less sensitive material elsewhere, it may be necessary to take special precautions to guard against undue deterioration of records. The consultants recommend, therefore, that (7) the Director of Central Intelligence satisfy himself that preservation needs of CIA records are being met, through proper environmental conditions for storage of historically significant but deteriorating records, through conversion to a secondary format (microfilm, microfiche, optical disk, etc.), or other means, as appropriate. (This recommendation is a precaution, not a commentary based upon any observed shortcoming in the Agency's preservation program.)

Summary of Recommendations:

1. an inclusive, systematic review program,
 leading to regular retirement of records
 to the National Archives.
2. release of minimally sanitized documents
 in preference to withholding of whole documents.


3. awareness in the review program of information about CIA already publicly known.
4. adoption of archivally-tested selection criteria for review program.
5. assessment of progress of review program in 2-3 years by comparable or identical group of consultants.
6. publication of appropriate declassified CIA documents in Foreign Relations of the United States.
7. an ongoing concern for preservation considerations.

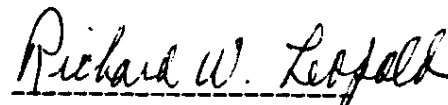
The consultants express their appreciation to William J. Casey, Director of Central Intelligence, and his staff for the courtesies extended during the two days of deliberations. Special thanks are due to Chief Historian Kenneth McDonald and to Director of Information Services, under whose responsibility the Historical Review Program will proceed. It was a productive two days of serious exchanges of information, for which the consultants and the agencies and disciplines which they represent are appreciative.

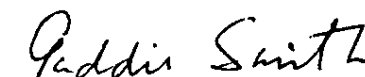
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Respectfully submitted,


John C. Broderick


John Lewis Gaddis


Richard W. Leopold


Gaddis Smith


Robert M. Warner

April 9, 1985
Date

HISTORICAL REVIEW PROGRAM

Meetings 18-19 March 1985

Agenda

Monday, 18 March

| | | | |
|------------|---|----------------------|------|
| 10:30 a.m. | Convene in Conference Room, 7D32 Headquarters | | |
| | Welcome and Introductions (Ken McDonald) | | STAT |
| 10:45 a.m. | Origins & Overview of the Historical Review Program (Ken McDonald) | | |
| | CIA's Records System | <input type="text"/> | STAT |
| 11:45 a.m. | Break for Lunch | | STAT |
| 12:00 noon | Lunch | | STAT |
| 1:30 p.m. | Reconvene in Conference Room 7D32 | | |
| | Comments on the Historical Review Program | <input type="text"/> | |
| | The Classification Review Division: Role & Experience | <input type="text"/> | STAT |
| | <input type="text"/> | | |
| 2:15 p.m. | Directorate of Operations & the Historical Review Program | <input type="text"/> | STAT |
| 2:45 p.m. | Directorate of Intelligence & the Historical Review Program | <input type="text"/> | |
| 3:15 p.m. | Break | | |
| 3:30 p.m. | The National Archives' Role in the Historical Review Program (Robert Warner or other NARS representative) | | |
| 4:00 p.m. | <u>Foreign Relations of the U.S. & the Historical Review Program</u> (Neal Petersen, Department of State) | | |
| 4:30 p.m. | Discussion and planning for Tuesday morning session | | |
| 5:00 p.m. | Adjourn | | |

Tuesday, 19 March

9:30 a.m. Convene in Conference Room, 7D32

12:00 noon Lunch

1:30 p.m. Convene in Conference Room, 7D32 (Consultants only)

4:00 p.m. Full group reconvenes in Conference Room, 7D32

4:30 p.m. Adjourn

N.B. Sometime on Tuesday afternoon an Agency representative will deliver honoraria checks and reimburse consultants' expenses.

HISTORICAL REVIEW PROGRAM

Meetings 18-19 March 1985

Participants

I. Consultants

| | |
|--------------------|---|
| John C. Broderick | Assistant Librarian for Research Services, Library of Congress |
| John Lewis Gaddis | Distinguished Professor of History, Ohio University |
| Richard W. Leopold | William Smith Mason Professor of American History Emeritus, Northwestern University |
| Gaddis Smith | Larned Professor of History, Yale University |
| Robert M. Warner | Archivist of the United States |

II. CIA

STAT



Deputy Director of Information Services
Director of Information Services
Chief, Information Management Branch, Resources Division, Office of Information Services
Staff Historian, DCI History Staff
Chief, Classification Review Division
Information Review Officer, Directorate of Intelligence

STAT

Ken McDonald

Chief, DCI History Staff



Chief, Historical Review Branch, Classification Review Division, Office of Information Services
Director, Information Management Staff, Directorate of Operations

III. Others

| | |
|-------------------|---|
| Frank G. Burke | Acting Assistant Archivist for the National Archives |
| Neal H. Petersen | Deputy Historian, Department of State (Monday 4 p.m.) |
| William Z. Slany | The Historian, Department of State (Monday 4 p.m.) |
| Edwin A. Thompson | Director, Records Declassification Division, NARS |

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Barry Goldwater, Ariz., Chairman
Daniel Patrick Moynihan, N.Y., Vice Chairman
E. BARN, UTAH
H. H. CHAFFIN, R.I.
HARD G. LUGAR, IND.
J. COLIN WALLOP, WYO.
J. DURENBERGER, MINN.
J. V. ROTH, JR., DEL.
J. S. COHEN, MAINE
WALTER D. HUDDLESTON, KY.
JOSEPH R. BIDEN, JR., DEL.
DANIEL K. INOUE, HAWAII
HENRY M. JACKSON, WASH.
PATRICK J. LEAHY, VT.
LLOYD BENTSEN, TEX.

United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, D.C. 20510

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HOWARD M. BAKER, JR., TENN., EX OFFICIO
ROBERT C. BYRD, W. VA., EX OFFICIO
ROBERT R. SIMMONS, STAFF DIRECTOR
GARY J. SCHMITT, MINORITY STAFF DIRECTOR

October 3, 1983

The Honorable William J. Casey
Director of Central Intelligence
Central Intelligence Agency
Washington, D.C. 20505

Dear Bill:

Last April, our Chairman, Barry Goldwater, introduced a bill that would relieve the Central Intelligence Agency from the burden of searching some of its files in response to Freedom of Information Act requests. While several of us had concerns regarding aspects of this bill, we all agreed with you that it was foolish to require the CIA to search its most sensitive files for documents that would almost never be declassified and released.

Five months of work are now nearing culmination in a bill that we all will be able to support wholeheartedly. You and we have crafted solutions to such difficult problems as the nature of judicial review under this bill, the extent to which the files on activities that have been the subject of investigations will remain open to search and review under FOIA, and how intelligence memoranda or policy memoranda that are circulated outside of designated files but then returned to those files for safekeeping will remain accessible for FOIA search and review. We have also agreed that the CIA will review its designations at least once every ten years to see whether some files--or portions of files--should be removed from designated status.

I think that now is an excellent time to make parallel progress on an issue that our work on S.1324 has highlighted. This is the need to make more declassified materials available to historians. We both know how important history is. I am an avid reader of history and you are a writer of it. We both have been shaped in part by history that we have read over the years. As historians write the definitive works on the post-World War II era, it is terribly important that their studies be based on as full a record as possible, consistent with the need to protect our national security.

The Honorable William J. Casey
October 3, 1983
Page Two

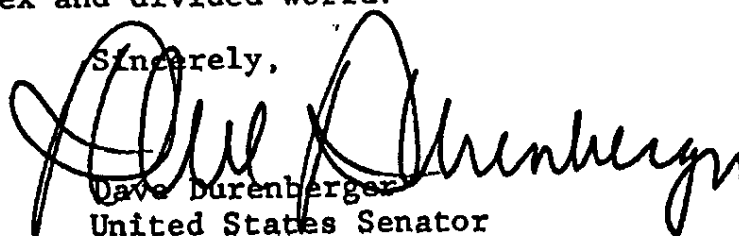
You have recognized this in putting forth a bill that leaves unchanged current FOIA access to intelligence memoranda, policy documents, and files on those covert action operations the existence of which is no longer properly classified. The importance of an accurate historical record is also recognized in your criteria for removing files from designation, which are to include "historical value or other public interest in the subject matter" and "the potential for declassifying a significant part of the information."

I urge you to take the next, vitally important step: to establish procedures for reviewing and declassifying some of the material in your non-designated or de-designated files. Your declassification review program need not review the mass of documents that are either of no interest to historians or still too sensitive to be released. Rather, you could reasonably base your selection of material for review on the same criteria that you have set forth for the review of file designations. The important thing is to make the declassification of useful historical information a cooperative endeavor, rather than a test of wills fought out in FOIA requests and courtrooms.

A declassification review program would be a burden for the CIA, but it would be a manageable burden and one well worth assuming. The CIA would retain control over the size of this effort, and you could avoid the sort of crises and bottlenecks that bedevil areas like FOIA, in which the pace of work may be dictated by the level of outside requests and the vagaries of litigation. You already have a CIA Historian, so it might be reasonable to give him a major role in declassification review. I would be happy to lead the effort to provide you budget support for a dozen positions, say, to be devoted to this enterprise.

Establishment of a declassification review program would be a fitting complement to the fine Intelligence Information Act that I am sure we will pass. It would demonstrate your commitment to openness in the things that matter, while continuing to safeguard that which must remain secret. And it would make a lasting contribution to public understanding of the role of intelligence in a complex and divided world.

Sincerely,



Dave Durenberger
United States Senator

Central Intelligence Agency



Washington, D.C. 20505

CH HISTORY
STAFF

OLL 83-2403

4 OCT 1983

Honorable Dave Durenberger
United States Senate
Washington, D.C. 20510

Dear Senator Durenberger:

I received your letter yesterday with its kind words about our efforts on the Intelligence Information Act. We have worked diligently through the spring and summer to reach agreement with you and your colleagues on this bill. We have done this because we are convinced, as you are, that the bill will relieve us of a needless burden without harming the interests of the press, authors, or the public at large. I am gratified to hear you say that as a result of our efforts you will be able to support this bill. I certainly believe it merits everyone's support.

Your views regarding the need for an accurate historical record are ones that I share. If Congress is willing to provide the resources, I am prepared to institute a new program of selective declassification review of those materials that we believe would be of greatest historical interest and most likely to result in declassification of useful information.

The term "selective" is very important. There is no point in reviewing files that we basically know will contain little releasable information. And it makes no sense to review -- or even to release -- material that has become releasable only because it is trivial. Our professionals have a pretty good sense of what is likely to prove releasable; and we would be happy to work with our Historian, other agency historical offices, the Archivist of the United States, and others to determine what topics are of the greatest interest and importance. Historians would have to trust us, however, to make these professional judgments in good faith. A declassification review program could function only if we maintained control over the workload and concentrated our limited resources on the areas where they would do the most good.



One certain consequence of this selectivity would be a concentration of our efforts on the review of older, as opposed to more recent, material. Such material which documents the early years of CIA could well result in the release of information that explains the role of intelligence in the making of foreign policy. As a general rule, we are likely to limit the declassification review program to files at least 20 or 30 years old. However, these older files would certainly contain information which continues to be relevant to today's world. I am hopeful that whatever material we can release, consistent with the need to protect sources and foreign relations, will make a major contribution to historical research and interpretation.

At the moment, I do not know whether our small historical staff would be in a position to manage a selective declassification review program. But no matter where such a program would be placed organizationally within the Agency, I understand that what you are suggesting is a program provided with adequate resources. Several weeks ago, on my own initiative, I had requested the Historian of the CIA to explore a program that would result in the release of usable historical materials from the World War II period. I look forward to working with additional resources having, as you suggest, the mission of declassifying and releasing historical materials that no longer require protection.

STAT

Sincerely,

707 William J. Casey
William J. Casey
Director of Central Intelligence

DISTRIBUTION:

Original - Addressee

1 - DCI

1 - DDCI

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✓ 1 - Chief, History Staff

EM:KAD:csh (3 October 1983)

Retyped: EM.KAD:maw (4 October 1983)

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CENTRAL INTELLIGENCE AGENCY
AND THE NATIONAL ARCHIVES AND RECORDS SERVICE

SUBJECT: Accessioning Records of CIA Predecessor Wartime Organizations into the National Archives of the United States - Associated Responsibilities and Procedures

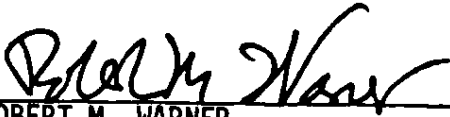
1. In considering the transfer of Records of the Central Intelligence Agency (CIA) Predecessor wartime organizations, primarily those of the Office of Strategic Services (OSS), to the National Archives and Records Service (NARS) for accessioning and release to the public, the CIA has expressed concerns that the records may contain information that is inappropriate for immediate access. For purposes of simplicity, these records will hereafter be referred to as the "OSS records." NARS has provided assurances that its processing procedures will address and resolve these concerns before access is provided. This Memorandum of Understanding reflects mutual agreement that the CIA and NARS review procedures, outlined below will serve to expedite the release of OSS records to the public while providing appropriate safeguards against premature access.
2. The OSS records will be examined for declassification by the CIA. Documents or portions of documents under the final declassification jurisdiction of the CIA (successor Agency) which are found still to contain national security information despite the passage of time will be withdrawn from the records and withheld in the custody of the CIA. A withdrawal card bearing a unique number will be substituted for the withdrawn material. Upon completion of the CIA's examination, the records appropriate for transfer as permanent records will be sent to NARS for accessioning. The records will consist of declassified and unclassified material, except as indicated below.
3. Classified material which the CIA has determined does not require continued protection insofar as that agency's interests are concerned, but which may require continued national security protection in the interest of some other U.S. agency or of a foreign government will be transferred along with the declassified and unclassified OSS records. Such classified material will be identified by the CIA examiners by placing a tab around the relevant material or by affixing a tag to the individual items. It will be the responsibility of National Archives declassification specialists to review such identified classified material for possible declassification at appropriate intervals in accordance with applicable Executive Orders and Information Security Oversight Office directives. The CIA's Information and Privacy Coordinator will assist NARS officials responding to access requests when the identification of the responsible U.S. agency is unclear or when transmittal to the appropriate foreign government is required for declassification determination.
4. NARS will screen and withhold from access and/or refrain from copying for the public declassified or unclassified accessioned OSS records containing information about a living individual which reveal details of a highly personal nature that the individual could reasonably assert a claim to withhold from the public to avoid a clearly unwarranted invasion of privacy, including but not

2

limited to information about the physical or mental health or the medical or psychiatric care or treatment of the individual, and that contain personal information not known to have been previously made public, and relate to events less than 75 years old (41 CFR 105.61.5302-4).

5. It is agreed that the OSS records still contain sensitive documents which could cause adverse international repercussions. Therefore, as records are transferred, NARS will conduct initial screening on a series or subseries basis. When files or documents are requested, a re-screening will be performed on potentially sensitive records before such items are furnished to researchers. At such time, NARS reviewers will exercise discretion regarding the release of records that might cause national or international repercussions. In case of doubt, or where CIA has identified sensitive records, NARS will consult with appropriate information specialists of the CIA concerning the propriety and/or legal basis for continued denial or release.


6. The procedures set forth in this Memorandum of Understanding will become effective upon execution of this Memorandum of Understanding by both NARS and CIA.



ROBERT M. WARNER
Archivist of the United States

May 25, 1984
Date

STAT



HARRY A. FITZWATER
Deputy Director for Administration
Central Intelligence Agency

5 June 1984
Date

INFO

Approved For Release 2009/09/29 : CIA-RDP87M01152R000300320023-4

ER 85-1/20

Office of Legislative Liaison
Routing Slip

| TO: | ACTION | INFO | STAT |
|---------------------------|--------|------|------|
| 1. D/OLL | | X | |
| 3. DD/OLL | | X | |
| 3. Admin Officer | | X | |
| 4. Liaison | | | STAT |
| 5. Legislation | | X | |
| 6. [Redacted] | | X | |
| 7. [Redacted] | | X | |
| 8. [Redacted] | | | |
| 9. [Redacted] | | | |
| 10. [Redacted] | | | |
| SUSPENSE _____ Date _____ | | | |

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| Action Officer: |
| Remarks: |

ecf 26 April 85
Name/Date

Record

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26 April 1985

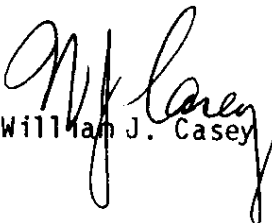
DCI

MEMORANDUM FOR: Deputy Director of Central Intelligence
Executive Director
Director, Intelligence Community Staff
Deputy Director for Intelligence
Deputy Director for Administration
Deputy Director for Operations
Deputy Director for Science and Technology
Chairman, National Intelligence Council
General Counsel
Inspector General
Comptroller
✓ Director, Office of Legislative Liaison
Director, Public Affairs
Executive Secretary
Administrative Officer, DCI

FROM : Director of Central Intelligence

SUBJECT : Acting Director of Central Intelligence

During my absence 1 May through 13 May 1985, Deputy Director McMahon will be the Acting Director of Central Intelligence and shall act for and exercise the powers of the Director, as provided by the National Security Act.


William J. Casey

ADMINISTRATIVE-INTERNAL USE ONLY

26 April 1985

MEMORANDUM FOR: Deputy Director of Central Intelligence
Executive Director
Director, Intelligence Community Staff
Deputy Director for Intelligence
Deputy Director for Administration
Deputy Director for Operations
Deputy Director for Science and Technology
Chairman, National Intelligence Council
General Counsel
Inspector General
Comptroller
Director, Office of Legislative Liaison
Director, Public Affairs
Executive Secretary
Administrative Officer, DCI

FROM : Director of Central Intelligence

SUBJECT : Temporary Delegation of Authority

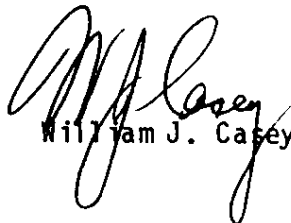
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1. During those periods on 29 April and 13-14 May when both the DDCI and I will be absent, all authorities of the DCI and DDCI--including those as set forth in Tab A, but excluding those reserved by law as set forth in Tab B--are delegated to If is unavailable to discharge these authorities and responsibilities, they are hereby delegated to the next most senior Deputy by date of appointment as Deputy Director.

2. During this period, such officer, while neither assuming the statutory office of DCI nor accruing the powers of the office, is hereby designated Acting Director.

This 26th day of April, 1985.


William J. Casey

Attachments

ADMINISTRATIVE-INTERNAL USE ONLY

A

Temporary Delegation of Authority

1. The authority of the DCI to terminate employment pursuant to Section 102(c) of the National Security Act, 50 U.S.C. § 102(c);
2. The authorities of the DCI relating to procurement as prescribed by Section 3(c) of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403c;
3. The authority of the DCI relating to the entry of certain aliens as prescribed by Section 7 of the CIA Act of 1949, 50 U.S.C. § 403h;
4. The authority of the DCI relating to a certification of expenditures as prescribed by Section 8 of the CIA Act of 1949, 50 U.S.C. § 403j;
5. The authority of the DCI relating to the payment of death gratuities as prescribed by Section 11 of the CIA Act of 1949, 50 U.S.C. § 403k;
6. The authority of the DCI to accept gifts and the related authorities as prescribed by Section 12 of the CIA Act of 1949, 50 U.S.C. § 403l;
7. The authorities of the DCI conveyed by the Central Intelligence Agency Retirement Act of 1964, as amended, 50 U.S.C. § 403 Note
8. The determinations by the DCI concerning persons trained in foreign espionage systems as authorized by 50 U.S.C. § 852(c) and (d);
9. The determinations by the DCI as to atomic energy information authorized by 42 U.S.C. § 2162(e);
10. The determinations by the DCI under the Atomic Weapons and Special Nuclear Materials Rewards Act as to the entry of certain aliens and payment of reward as authorized by 50 U.S.C. §§ 47c and e.
11. The determinations by the DCI under the Foreign Service Act of 1980 that the imprisonment of a foreign national resulted from his employment by the United States and that compensation is authorized by 22 U.S.C. § 3970.
12. The authority to approve regulations which increase, decrease or otherwise impact on DCI/DDCI authorities. .
13. Establish rates of pay of CIA employees. .

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B

Authorities Not Delegated as a Matter of Law

1. The authority of the DCI to execute formal claims of states secrets privilege. (See Reynolds v. U.S., 345 U.S. 1 (1953)).
2. The authority of the DCI to execute certifications under the Foreign Intelligence Surveillance Act. (See 50 U.S.C. § 1801 and Executive Order 12139 dated 23 May 1979.)
3. Pursuant to Executive Order 12333 as currently implemented by procedures promulgated under Executive Order 12036, the authorities of the DCI or DDCI which relate to intelligence activities of the Central Intelligence Agency conducted pursuant to Attorney General guidelines and subject to review and approval of the Attorney General; such authorities include:
 - ° Authority of DCI to request Attorney General approval of Central Intelligence Agency participation in foreign counterintelligence activities conducted in the United States (paragraph 1 of § 1-805 Procedures).
 - ° Authority of DCI to approve Central Intelligence Agency participation in Federal Bureau of Investigation or Department of Defense counterintelligence activities conducted in the United States (paragraph 2 of § 1-805 Procedures).
 - ° Authority of DCI to request Attorney General approval of surreptitious and continuous electronic or mechanical monitoring (paragraph 8 of § 2-203 Procedures).
 - ° Authority of DCI to request FBI to undertake surreptitious and continuous electronic or mechanical monitoring (paragraph 17 of § 2-203 Procedures).
 - ° Authority of DCI to request Attorney General approval of unconsented physical searches directed against United States persons abroad (paragraph 11 of § 2-204, 205 Procedures).
 - ° Authority of DCI to request FBI to conduct a physical search (paragraph 19 of § 2-204, 205 Procedures).
 - ° Authority of DCI to approve each instance in which Agency employees have undisclosed participation in an organization within the U.S. in order to identify and develop foreign nationals as sources or contacts (paragraph 5.g of § 2-207 Procedures).

- Authority of DCI to approve categories of permissible undisclosed participation (paragraph 8 of § 2-207 Procedures).
- Authority of DCI to request Attorney General approval of other types of undisclosed participation (paragraph 11 of § 2-207 Procedures).
- Authority of DCI to request FBI to undertake electronic surveillance in the United States (paragraph A.3 of § 2-208 Procedures).
- Authority of DCI to request Attorney General approval of electronic surveillance (paragraph A.5 of § 2-208 Procedures).
- Authority of DCI to approve classes or categories of covert procurement (paragraph 6 of § 2-303 Procedures).
- Authority of DCI to request Attorney General approval to assist federal, state or local law enforcement agencies (paragraph 6 of § 2-309c Procedures).
- Authority of DCI to designate subordinates to execute various specified functions as specified in the Executive Order 12036 Procedures (See, e.g., § 2-206).
- Authority of DCI to apply for Presidential exceptions to the Executive Order 12036 Procedures.

4. Under Executive Order 12065, the authorities of the DCI which relate to the classification of documents. Such functions include:

- Authority of the DCI (or DDCI) to classify a document after receipt of a request for such document under the FOIA or Mandatory Review provisions of the Executive Order on classification. (See § 1-606 of Executive Order 12065.)
- Authority of the DCI to delegate Top Secret classification authority (See § 1-204 of Executive Order 12065.)
- Authority of DCI to extend the classification period for individual documents beyond twenty years (See § 3-401 of Executive Order 12065.)
- Authority of the DCI to create a special access programs to control particularly sensitive classified information (See § 4-201 of Executive Order 12065.)